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6 Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 OPERATING ENGINEERS' HEALTH AND
11 WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA;

| Case No.:

COMPLAINT

PENSION TRUST FUND FOR OPERATING ENGINEERS;

14 PENSIONED OPERATING ENGINEERS' HEALTH AND WELFARE TRUST FUND;

**15 OPERATING ENGINEERS AND
16 PARTICIPATING EMPLOYERS PRE-
APPRENTICE, APPRENTICE AND
17 JOURNEYMEN AFFIRMATIVE ACTION
TRAINING FUND;**

RUSSELL E. BURNS and RICHARD PIOMBO,
Trustees;

20 | HEAVY AND HIGHWAY COMMITTEE; and

21 OPERATING ENGINEERS LOCAL 3 OF THE
INTERNATIONAL UNION OF OPERATING
22 ENGINEERS, AFL-CIO.

23 | Plaintiffs.

24 | v.

25 K&K CRANE RENTAL SERVICES, INC., a California corporation,

Defendant.

Parties

1. The Operating Engineers' Health and Welfare Trust Fund for Northern California
 2 (which includes the Addiction Recovery Program, Inc.); Pension Trust Fund for Operating
 3 Engineers (which includes the Pension Plan for the Pension Trust Fund for Operating Engineers,
 4 and the Operating Engineers Annuity Plan); Pensioned Operating Engineers' Health and Welfare
 5 Trust Fund; and Operating Engineers and Participating Employers Pre-apprentice, Apprentice and
 6 Journeymen Affirmative Action Training Fund, are employee benefit plans as defined in the
 7 Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). They
 8 and their fiduciaries are together referred to herein as "ERISA Plaintiffs" or "Plaintiffs." Russell
 9 E. Burns and Richard Piombo are Co-Chairmen of the Joint Boards of Trustees of ERISA
 10 Plaintiffs with authority to act on behalf of all Trustees.

12. The Heavy and Highway Committee is a Trust established under the Labor
 13 Management Relations Act ("LMRA"), 302(c)(9), 29 U.S.C. § 186(c)(9).

14. Operating Engineers Local Union No. 3 of the International Union of Operating
 15 Engineers, AFL-CIO ("Union") is a labor organization as defined in § 2(5) of the National Labor
 16 Relations Act ("NLRA"), 29 U.S.C. § 152(5), and is represented by counsel herein for the limited
 17 purpose of collecting union dues owing as part of the subject contribution claims of Plaintiffs, and
 18 not for any other cause of action. The Union expressly reserves its rights to pursue any other cause
 19 of action on its own behalf.

20. K&K Crane Rental Services, Inc., a California corporation ("Defendant"), is an
 21 employer by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2).

Jurisdiction

23. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by
 24 virtue of ERISA § 502, 29 U.S.C. § 1132, in that Plaintiffs seek to enforce the provisions of
 25 ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA,
 26 seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

27. Jurisdiction exists in this Court over all the claims by virtue of LMRA § 301, 29
 28 U.S.C. § 185, in that Plaintiffs seek to enforce the terms and conditions of valid Collective

1 | Bargaining Agreements.

2 7. To the extent jurisdiction over any claim does not exist under ERISA or the
3 LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. §
4 1367 in that they arise out of a common nucleus of operative facts that form the basis of the
5 federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.

Venue

7 8. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an
8 action is brought under ERISA § 502 in a district court of the United States, it may be brought at
9 Plaintiffs' discretion, in the district where the plan is administered, where the breach took place, or
10 where a defendant resides or may be found, and process may be served in any other district where
11 a defendant resides or may be found. ERISA Plaintiffs' Trust Funds are administered in this
12 district at their principal place of business in Alameda, California. Thus, jurisdiction and venue are
13 properly grounded with this Court.

14 9. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29
15 U.S.C. § 185, as this Court has jurisdiction over the parties, as the Union maintains its principal
16 place of business in this district, its duly authorized officers or agents are engaged in representing
17 employee members in this district, and the claims arise in this district.

Intradistrict Assignment

19 10. The basis for assignment of this action to this court's Oakland Division is that all of
20 the events and omissions giving rise to Plaintiffs' claims occurred in the County of Alameda,
21 where ERISA Plaintiffs' Trust Funds and the Bargained Plans are administered, and where
22 Defendant therefore failed to fulfill its statutory and contractual obligations to Plaintiffs.

Bargaining Agreements

24 11. Defendant entered into the Independent Northern California Construction
25 Agreement (“Independent Agreement”) with the Union, which incorporates the Master Agreement
26 (“Master Agreement”) between the Union and the Associated General Contractors of California,
27 Inc. Defendant also entered into the Independent Equipment Rental Agreement for Northern
28 California (“Independent Rental Agreement”) with the Union, which incorporates the Master

1 Agreement (“Master Crane Agreement”) between the Union and the Crane Owners Association.
 2 The Independent Agreement, Master Agreement, Independent Rental Agreement, and Master
 3 Crane Agreement are collectively referred to herein as the “Bargaining Agreements.” The
 4 Bargaining Agreements incorporate the terms of the Trust Agreements establishing the Trust
 5 Funds (“Trust Agreements”). The Bargaining Agreements require Defendant to provide employer
 6 contributions to Plaintiffs’ Trust Funds, to the Union for union dues, and to the other plans more
 7 fully described in the Bargaining Agreements. Thus, ERISA Plaintiffs are third-party beneficiaries
 8 of the Bargaining Agreements.

9 12. Under the terms of the Bargaining Agreements, and the Trust Agreements
 10 incorporated therein, Defendant is required to pay certain contributions to: the Operating
 11 Engineers’ Vacation and Holiday Pay Plan; Contract Administration Fund; Job Placement Center
 12 and Market Area Committee Administration Market Preservation Fund; Crane Industry Labor
 13 Management Cooperative Trust Fund; Industry Stabilization Fund; and Business Development
 14 Funds (collectively referred to herein as the “Bargained Plans”). Plaintiffs’ Boards of Trustees
 15 have been authorized to collect and distribute monies due to the Bargained Plans under the
 16 Bargaining Agreements and Trust Agreements.

17 13. Under the Bargaining Agreements and Trust Agreements, which are incorporated
 18 into the Bargaining Agreements and made binding on Defendant, Defendant is required to
 19 regularly pay to ERISA Plaintiffs, the Bargained Plans, and the Union, certain sums of money, the
 20 amounts of which are determined by the hours worked by Defendant’s employees. Contributions
 21 are due on the fifteenth (15th) day of the month following the month during which hours were
 22 worked, and are considered delinquent if not received by the twenty-fifth (25th) day of that month.
 23 Defendant is also required, pursuant to the Bargaining and Trust Agreements, to pay liquidated
 24 damages in the amount of ten percent (10%) for each delinquent contribution, but in the amount of
 25 twenty percent (20%) for each delinquent contribution which is the subject of litigation. Moreover,
 26 the Bargaining and Trust Agreements provide that interest accrues on delinquent contributions at
 27 the rates reasonably set by the Trustees from the date they become delinquent, which is the
 28 twenty-sixth (26th) day of the month in which payment was due, until paid in full.

1 14. The Bargaining and Trust Agreements further require Defendant to maintain time
2 records or time cards, and to permit an authorized Trust Fund representative to examine such
3 records of Defendant as is necessary to determine whether Defendant has made full payment of
4 all sums owed to ERISA Plaintiffs. Should an audit of Defendant's records reveal Defendant has
5 failed to provide full and prompt payment of all sums due to Plaintiffs, Defendant must reimburse
6 Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant
7 to the Bargaining and Trust Agreements.

Factual Allegations

9 15. Defendant has failed and refused to pay contributions reported by it as due for the
10 period from March 2015 through August 2015. Liquidated damages and interest have been
11 incurred and are owed to Plaintiffs for the unpaid contributions for this period, as well as for prior
12 late paid contributions for the period from April 2014 through February 2015. Liquidated
13 damages are also owed for late-paid contributions for the month of January 2014.

14 16. Plaintiffs are also entitled to recover any and all other contributions, and all
15 liquidated damages and interest on delinquent contributions not specified above, found due on
16 timecards, audit, or otherwise, including estimated contributions for months that Defendant fails to
17 report to Plaintiffs, through the time of Judgment. Plaintiffs reserve the right to conduct an audit to
18 determine whether there are any additional amounts due from Defendant.

FIRST CAUSE OF ACTION
**For Payment of Delinquent Contributions, Interest, Liquidated Damages,
Attorneys' Fees and Costs Against Defendant**

17. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 16, above.
18. Defendant has a contractual duty to timely pay the required contributions to
Plaintiffs and the Bargained Plans, and to timely pay dues to the Union, pursuant to the
Bargaining Agreements and Trust Agreements. Defendant also has a contractual duty under the
Bargaining Agreements and Trust Agreements to permit an audit of its records to determine
whether it is making full and prompt payment of all sums required to be paid by it to Plaintiffs,
and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

28 19. In addition, Defendant has a statutory duty to timely make the required payments to

1 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

2 20. By failing to make the required payments to Plaintiffs, Defendant breached the
 3 Bargaining and Trust Agreements and is in violation of ERISA § 515, 29 U.S.C. § 1145, and
 4 LMRA § 301(a).

5 21. Defendant's failure and refusal to pay the required contributions was at all times,
 6 and still is, willful. Defendant continues to breach the Bargaining Agreements, and incorporated
 7 Trust Agreements, by failing to pay all amounts owed as alleged. Said refusal is unjustified and
 8 done with knowledge and intent.

9 22. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing
 10 and irreparable injury, loss and damage unless Defendant is ordered specifically to perform all
 11 obligations required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381,
 12 the LMRA, 29 U.S.C. §§ 141-197, and the Bargaining and Trust Agreements, and is restrained
 13 from continuing to refuse to perform as required thereunder.

14 23. This Court is authorized to issue injunctive relief based on the traditional standard.
 15 As set forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the
 16 possibility that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries.
 17 The balance of hardships and advancement of public interest favor ERISA Plaintiffs.

18 24. This Complaint does not in any manner relate to statutory withdrawal liability that
 19 may or may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to
 20 pursue any such withdrawal liability claims against Defendant as provided by ERISA Plaintiffs'
 21 Plan Documents, Trust Agreements, and the law.

22 Prayer

23 WHEREFORE, Plaintiffs pray as follows:

24 1. For a judgment against Defendant as follows:

25 (a) Any unpaid contributions, due at time of Judgment, including those
 26 specified above as well as any other contributions determined as due by audit, timecards, or
 27 otherwise, including estimated contributions for months that Defendant fails to report to
 28 Plaintiffs, pursuant to ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

1 i. To ERISA Plaintiffs and the Bargained Plans, in accordance with
2 ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

3 ii. To the Union in accordance with the Bargaining Agreements.

4 (b) Liquidated damages on all late-paid and unpaid contributions in an amount
5 provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs,
6 ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

7 (c) Interest on all late-paid and unpaid contributions at the rates set in
8 accordance with the Bargaining Agreements, the Trust Agreements, and ERISA § 502(g)(2)(B),
9 29 U.S.C. § 1132(g)(2)(B).

10 2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit
11 fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and
12 in accordance with the Bargaining Agreements for all Bargained Plans; and with LMRA § 301,
13 29 U.S.C. § 185, for all Plaintiffs.

14 3. For an order,

15 (a) requiring that Defendant comply with its obligations to Plaintiffs under the
16 terms of the Bargaining Agreements and the Trust Agreements;

17 (b) enjoining Defendant from violating the terms of those documents and of
18 ERISA; and

19 (c) enjoining Defendant from disposing of any assets until said terms have
20 been complied with, and from continuation or operation of Defendant's business until said terms
21 have been complied with.

22 4. That the Court retain jurisdiction of this case pending compliance with its orders.

23 5. For such other and further relief as the Court may deem just and proper.

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25 Dated: October 15, 2015

SALTZMAN & JOHNSON
LAW CORPORATION

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By: _____ /S/

Erica J. Russell
Attorneys for Plaintiffs

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